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BORN IN THE USA?

Judges evade Obama birth-certificate query

Abandon plans to penalize attorney whose clients challenged eligibility

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By Bob Unruh
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Judges on the 3rd U.S. Circuit Court of Appeals suddenly have abandoned plans to assess damages against an attorney whose clients are challenging Barack Obama's eligibility to be president after he argued that if there was to be punishment, he would have the right to know whether the defendants could have mitigated their injury by publicly releasing Obama's birth documentation.

The decision came from Judge Dolores Sloviter in the Kerchner vs. Obama case handled by attorney Mario Apuzzo. The court had ordered Apuzzo to explain why defense costs shouldn't be assessed against him for the "frivolous" appeal.

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However, her newest order denied Apuzzo's request to reconsider the case and stated "based on Mr. Apuzzo's explanation of his efforts to research the applicable law on standing, we hereby discharge the Order to Show Cause."

The case was filed against Obama, Congress and others just before Obama was sworn into office, arguing that Obama was a British subject and not a U.S. citizen.

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"We further contend that Obama has failed to even conclusively prove that he is at least a 'citizen of the United States' under the Fourteenth Amendment as he claims by conclusively proving that he was born in Hawaii," the lawsuit claims.

Apuzzo represents Charles F. Kerchner Jr., Lowell T. Patterson, Darrell James Lenormand and Donald H. Nelson Jr.

(Story continues below)

Named as defendants are Barack Hussein Obama II, the U.S., Congress, the Senate, the House of Representatives, former Vice President Dick Cheney and House Speaker Nancy Pelosi.

The case alleges Congress failed to follow the Constitution, which "provides that Congress must fully qualify the candidate 'elected' by the Electoral College Electors."

The district court rejected the case based on issues of "standing" and never addressed the core issues presented. The appellate court did the same.

But Apuzzo had explained to the court that under standard rules of judicial procedure, while they allow for damages to be assessed in "frivolous" cases – even though the district never made that ruling – there also is a responsibility on the part of the defendants to mitigate their damages.

In this case, he asked the court to "enforce my right to discover whether defendants had a copy of the [certificate of live birth, Obama's] 1961 long-form birth certificate, and related documents showing that Obama was born in Hawaii which they could have simply shared [with] ... the Kerchner plaintiffs."

He said had those actions taken place and the documents been provided, the plaintiffs "would not have come into existence."

That disclosure, he argued, "would have mitigated the damages and costs they now claim they suffered from having to defend plaintiffs' appeal."

"To confirm the veracity of the defendants' representations, I also have a right under (Federal Rules of Civil Procedure) 26(a)(1) and 26(b)(1) to receive a copy of those documents," he argued. "Should the court be inclined to find that I am liable for defendants' damages and costs, I also request that the court defer entering judgment on damages and costs until I have had an opportunity to address the amount of damages claimed by defendants, the issue of proximate cause, and whether defendants satisfied their burden to mitigate those damages.

"So that I may have a meaningful opportunity to present defenses to defendants' claim of damages and costs, including showing that defendants have failed to mitigate their claimed damages, I am requesting limited discovery of Obama's (certificate of live birth), his 1961 long-form birth certificate, and any documents that may be relevant in showing where Obama was born, along with a hearing on the record at which I will have a fair opportunity to present witnesses, evidence and defenses to the defendants' claim of damages and costs," he wrote.

The court's response was to drop the "Order to Show Cause" almost immediately, referencing only Apuzzo's "research."

Apuzzo told WND the case, which now is being prepared for the U.S. Supreme Court, probably was impacted by his explanation of his rights and his suggestion a simple disclosure of Obama's birth documentation could have resolved the issue and "mitigated" the defendants' claimed damages.

He also said it's essential to obtain a decision from the highest court in the land, because, of the multitude of cases that have been brought over the eligibility issue, virtually none has addressed the question itself. All have been decided on "standing" or other side issues.

"Only the Supreme Court can decide the issue in the context of Article 2 standing," he said.

He explained Obama can claim no special privacy rights to his birth documentation since his campaign already has

posted online an image of a "Certification of Live Birth," a document critics say was available to children not born in Hawaii at the time. Documents supporting the birth certificate also should be public, Apuzzo argued.

At the online Post & Email, a forum-page participant said the results of the situation are perfectly clear.

"I think the court was really afraid of this – 'Should the court be inclined to find that I am liable under Rule 38 for defendants' damages and costs, I respectfully request that the court recognize and enforce my right to discover whether defendants had a copy of the (certificate of live birth), his 1961 long-form birth certificate, and related documents.'"

"They really didn't want to risk Mr. Apuzzo having a legal reason to get BO's BC," he wrote.

In fact, Apuzzo told WND that, had the option of getting Obama's document come up, he "would have paid for that out of my own pocket" to resolve the conflict and preclude the need for his case and others to be pursued.

"That's a big factor, and a legitimate point in the mitigation of damages and discovery. If he didn't have the BC, that's it. We're done. No lawsuit. No Congress. No Justice Department."

The earlier decision – and show-cause order – came from Judges Sloviter, Maryanne Trump Barry and Thomas Hardiman of the 3rd U.S. Circuit Court of Appeals.

The judges' opinion dismissed as "frivolous" the appeal in the Kerchner case of the lower court's decision to throw it out.

No "standing," the district court had ruled, for asking about the issue of Obama's citizenship being governed by the British Nationality Act of 1948 since, at his birth, his father was a subject of the British Crown – a circumstance even Obama has admitted.

Apuzzo has explained that the case maintains that while the term "natural born citizen" is not defined in the Constitution, "under the law of nations, Obama is not eligible to be president and commander in chief of the military because, being born with conflicting allegiance to Great Britain, which he inherited from his non-United-States-citizen father, and possibly to the United States if he was born in Hawaii as he claims but has not shown, he cannot meet the Founders and Framers' constitutional

definition of an Article II 'natural born Citizen,' which requires the president and commander in chief of the military to have unity of citizenship and allegiance from birth only to the United States, which status is acquired at birth only if the child is born in the United States (or its equivalent) to a citizen mother and father."

The issue of sanctions against attorneys for bringing challenges to Obama's presidency has been raised in previous cases. The 3rd Circuit cited *Hollister v. Soetoro* and *Rhodes v. MacDonald*.

In the *Hollister* case, attorney John Hemenway was threatened by a federal judge with financial penalties for bringing a court challenge to Obama's presidency.

The *Hollister* case ultimately was dismissed by Judge James Robertson, who notably ruled during the 2008 election campaign that the federal legal dispute had been "twittered" and, therefore, resolved.

Robertson sarcastically wrote: "The plaintiff says that he is a retired Air Force colonel who continues to owe fealty to his commander in chief (because he might possibly be recalled to duty) and who is tortured by uncertainty as to whether he would have to obey orders from Barack Obama because it has not been proven – to the colonel's satisfaction – that Mr. Obama is a native-born American citizen, qualified under the Constitution to be president.

"The issue of the president's citizenship was raised, vetted, blogged, texted, twittered and otherwise massaged by America's vigilant citizenry during Mr. Obama's two-year campaign for the presidency, but this plaintiff wants it resolved by a court," Robertson wrote.

Then the judge suggested financial penalties against Hemenway for bringing the case. Hemenway responded that the process then would provide him with a right to a discovery hearing to see documentation regarding the judge's statements – not supported by any evidence introduced into the case – that Obama was properly "vetted."

Hemenway warned at the time, "If the court persists in pressing Rule 11 procedures against Hemenway, then Hemenway should be allowed all of the discovery pertinent to the procedures as court precedents have permitted in the past.

"The court has referred to a number of facts outside of the record of this particular case and, therefore, the

undersigned is particularly entitled to a hearing to get the truth of those matters into the record. This may require the court to authorize some discovery," Hemenway said.

The court ultimately backed off its threat of financial penalties and instead issued a statement critical of the attorney.

In the Rhodes case, attorney Orly Taitz was ordered penalized with a \$20,000 fine for bringing the challenge. However, the circumstances of that penalty linked it to issues other than the subject of the court documents.

Apuzzo said the issue of standing should have been more than clear to the judges: "How can you deny he's affecting me?" Apuzzo told WND during a previous interview. "He wants to have terror trials in New York. He published the CIA interrogation techniques. On and on. He goes around bowing and doing all these different things. His statements we're not a Christian nation; we're one of the largest Muslim nations. It's all there."

WND also has reported that among the documentation not yet available for Obama includes his kindergarten records, Punahou school records, Occidental College records, Columbia University records, Columbia thesis, Harvard Law School records, Harvard Law Review articles, scholarly articles from the University of Chicago, passport, medical records, files from his years as an Illinois state senator, his Illinois State Bar Association records, any baptism records and his adoption records.

Apuzzo said it is "self-evident" under the Constitution that "anyone aspiring to be president has to conclusively prove that he or she is eligible to hold that office. Part of that burden is conclusively showing that one is a 'natural born citizen.' Hence, the citizenship status of Obama is critical to the question of plaintiffs having standing, for it is that very statute which is the basis of their injury in fact."

"At this time he was still a private individual who had the burden of proving that he satisfied each and every element of Article II, Section 1, Clause 5. That plaintiffs filed their action at this time is important for it not only sets the time by which we are to judge when their standing attached to their action against Obama, Congress and the other defendants ... but also to show that Obama has the burden of proof to show that he is a 'natural born citizen' and satisfied the other requirements of Article II," Apuzzo wrote earlier.

"At no time in these proceedings or in any other of the

many cases that have been filed against him throughout the country has Obama produced a 1961 contemporaneous birth certificate from the state of Hawaii showing that he was born there. ... We must conclude for purposes of defendants' motion that since Obama is not a 14th Amendment 'Citizen of the United States' let alone an Article II 'natural born citizen,' he is not eligible to be president and commander in chief. Not being eligible to be president and commander in chief he is currently acting as such without constitutional authority. It is Obama's exercising the singular and great powers of the president and commander in chief without constitutional authority which is causing plaintiffs' injury in fact," he wrote.

WND has reported on dozens of legal challenges to Obama's status as a "natural born citizen." The Constitution, Article 2, Section 1, states, "No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President."

Some of the lawsuits question whether he was born in Hawaii, as he insists. If he was born out of the country, Obama's American mother, the suits contend, was too young at the time of his birth to confer American citizenship to her son under the law at the time.

Other challenges have focused on Obama's citizenship through his father, a Kenyan subject to the jurisdiction of the United Kingdom at the time of his birth, thus making him a dual citizen. The cases contend the framers of the Constitution excluded dual citizens from qualifying as natural born. And still others contend he holds Indonesian citizenship from his childhood living there.

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